

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2015

Public Authority: Merthyr Tydfil County Borough Council

Address: Civic Centre
Castle Street
Merthyr Tydfil
CF47 8AN

Decision (including any steps ordered)

1. The complainant has requested information from Merthyr Tydfil County Borough Council ("the council") about recent care records relating to a named individual. Due to the context of the request, the council responded under the terms of the Data Protection Act ("the DPA") and disclosed the personal data of the complainant only. The complainant subsequently contested that the entire request should have been considered under the terms of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the complainant's personal data is exempt under section 40(1) of the FOIA. The remaining information caught by the request is the personal data of third parties and is exempt under section 40(2).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 28 January 2014, the complainant wrote to the council and requested the following information in respect of actions by the council's social services office:

"I would request all information held on how you formulated these accusations, and how we were not interviewed prior to this libellous information documentation I would be interested in any information held by your organisation regarding my request. I understand that I do not have to specify particular files of documents and that it is the

departments responsibility to provide the information I require. I would like to receive the information in photo copy."

5. The council responded on 11 February 2014. It advised the requester that it considered the request should be dealt with under the terms of the DPA and provided advice about this.
6. Following further dispute from the complainant on 13 February 2014, the council wrote to the complainant on 28 February 2014 and reiterated its position, following which the complainant submitted a Subject Access Request ("SAR") under the terms of the DPA.

Scope of the case

7. The complainant initially contacted the Commissioner on 13 February 2014 to complain about the way their request for information had been handled. Following the ICO's identification of the request being for information that may constitute the complainant's personal data, the complainant was advised to submit a SAR under the DPA and the case was closed. The complainant subsequently contacted the Commissioner on 21 October 2014 to request a decision notice that considered their request under the terms of the FOIA.
8. The Commissioner therefore considers the scope of this case is the determination of whether the information caught by the request can be disclosed under the terms of the FOIA. The Commissioner has identified that the information represents the personal data of both the complainant and third parties. As such the Commissioner will consider the information under the following two exemptions contained within the FOIA:
 - section 40(1) – the personal data of the requester,
 - section 40(2) – the personal data of third parties.

Reasons for decision

Section 40(1) – the personal data of the requester

9. Section 40(1) provides that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

10. Section 40(1) of provides an exemption for information when it represents the personal data of the requester. This exemption is absolute: no consideration of the data protection principles is necessary when considering this subsection and it requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with the obligation to confirm or deny whether they hold the requested information, by virtue of section 40(5)(a).

Is the requested information personal data?

11. Personal data is defined by section 1 of the DPA as:

*"...data which relate to a living individual who can be identified—
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual..."*

12. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, or has them as its main focus or else impacts on them in any way.
13. Having considered the information that the council subsequently provided to the complainant through a SAR under the DPA, the Commissioner is satisfied that this information relates specifically to the complainant.
14. The Commissioner is therefore satisfied that this information constitutes the personal data of the complainant. As such, the Commissioner considers that it is exempt from disclosure under section 40(1) of the FOIA, and the council was correct to consider its disclosure under the terms of the DPA.

Section 40(2) – the personal data of third parties

15. Section 40(2) provides that:

*"Any information to which a request for information relates is also exempt information if—
(a) it constitutes personal data which do not fall within subsection (1), and
(b) either the first or the second condition below is satisfied."*

16. Section 40(3) provides that:

*"The first condition is–
(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–
(i) any of the data protection principles..."*

Is the withheld information personal data?

17. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA (detailed in paragraph 11). The Commissioner has been provided with the information that the council considered fell within the scope of the request, but was not the complainant's personal data. Having reviewed the withheld information, constituted of care records held by the council's social services office, the Commissioner has identified that the information expressly relates to private individuals, council employees, and other third parties. The Commissioner considers that such information, deriving from the council's social services office, is clearly 'personal data' due to the purpose of its creation and use.

Is any of the information sensitive personal data?

18. Section 2 of the DPA defines sensitive personal data as personal data that consists of information about the following:

- an individual's mental or physical health,
- their political opinions,
- their sex life,
- their racial or ethnic origin,
- their religious beliefs,
- whether they are a member of a trade union,
- the commission or alleged commission of an offence by them, or any proceedings for any offence they have committed or are alleged to have committed.

19. The Commissioner considers that the majority of the withheld information falls into one or more of the above categories, and therefore represents the sensitive personal data of third parties.

Would disclosure breach the data protection principles?

20. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most

relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, and in accordance with the conditions set out in schedules 2 and 3 of the DPA.

21. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it helpful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

22. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
23. In this case it is clear that the information has been created by the council as part of its duty to provide social services, and contains a substantial proportion of sensitive personal data. As such, the Commissioner considers that none of the relevant third parties would have a reasonable expectation that the information would be disclosed into the public domain under the FOIA.

The consequences of disclosure

24. The Commissioner further considers that the release of the withheld personal data would disclose highly detailed and sensitive information about multiple third parties and their involvement in a social services matter. As such, it is reasonable to conclude that disclosure may place these third parties at risk of harm.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

25. The Commissioner has not identified any legitimate interests in disclosure. The requested information relates specifically to named individuals, and any concerns held by the complainant about the council's social services office in this matter would need to be referred to the appropriate authority.

Conclusion

26. In the circumstances of most requests there will always some legitimate public interest in the disclosure into the public domain of any information held by public authorities. This is because disclosure of

information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.

27. However, in the circumstances of this request, the Commissioner has identified that there is very limited justification for why the third parties' personal data should be publicly disclosed under the FOIA. The information relates to actions by the council's social services office, and contains a substantial proportion of sensitive personal data, the disclosure of which would place multiple third parties at risk of harm and distress. Having referred to the complainant's own correspondence with the council, it is evident that they are seeking for the information to be disclosed only to them, and not into the public domain. It is clear to the Commissioner that the complainant has pursued the matter under the FOIA without an understanding of what public disclosure under that legislation constitutes. The Commissioner has therefore reached the decision that this information is exempt under section 40(2).

Other matters

28. The Commissioner would draw the council's attention to the necessity of identifying the correct legislation to apply when an information request is received. While part of the requested information was the complainant's own personal data, the remainder was that of third parties. On identifying this, the council should have issued a refusal notice citing the relevant exemption at section 40(2).

Right of appeal

29. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
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